

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PHILLIP ARTHUR COVARRUBIAS,)

Petitioner,)

vs.)

ROBERT LeGRAND, *et al.*,)

Respondents.)

3:11-cv-00873-LRH-WGC

ORDER

This is a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in which petitioner, a state prisoner, is proceeding *pro se*. Under Rule 4 of the Rules Governing Section 2254 Cases, the court must conduct a preliminary review of the petition. If it plainly appears that petitioner is not entitled to relief in the district court, the court must dismiss the petition. *Id.*

Following initial review, it appears that the petition is subject to dismissal as a successive petition. Under 28 U.S.C. § 2244(b)(1), a claim in a “second or successive habeas corpus [petition] under section 2254” must be dismissed if it was presented in a prior petition. If the claim was not presented in the prior petition, it may be considered only in the circumstances provided by § 2244(b)(2). Under 28 U.S.C. § 2244(b)(3)(A), before a second or successive petition is filed in the district court, the applicant must move in the court of appeals for an order authorizing the district court to consider the petition.

In this case, petitioner seeks to challenge his conviction by way of guilty plea in case C190643 in the Eighth Judicial District Court for the State of Nevada for attempted sexual assault and child abuse and neglect with substantial mental harm.

1 Petitioner previously filed a federal petition in this court challenging the same judgment of
2 conviction in case 3:07-cv-00120-LRH-RAM. The court denied that petition on the merits on August
3 25, 2009. (3:07-cv-00120-LRH-RAM, ECF No. 15.) Petitioner has not attached a copy of an order from
4 the Ninth Circuit Court of Appeals authorizing the filing of a second or successive petition.

5 If an earlier federal petition is dismissed on the merits, any subsequent petition challenging the
6 same judgment of conviction will constitute a second or successive petition. *See, e.g. Henderson v.*
7 *Lampert*, 396 F.3d 1049, 1052-53 (9th Cir. 2005). Therefore, petitioner first must obtain permission
8 from the Ninth Circuit Court of Appeals for this court to consider the present petition. Accordingly, the
9 court orders petitioner to show cause, in writing, why the instant petition should not be dismissed as a
10 successive petition.

11 **IT IS THEREFORE ORDERED** that the clerk **SHALL FILE** the petition (ECF No. 1-1).

12 **IT IS FURTHER ORDERED** that, within **thirty (30) days** of entry of this order, petitioner
13 shall **SHOW CAUSE** in writing why the present petition should not be dismissed as a successive
14 petition due to petitioner's failure to first obtain an order from the Court of Appeals authorizing the
15 district court to consider the petition. If petitioner does not timely respond, the petition will be dismissed
16 without prejudice.

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18 DATED this 30th day of January, 2012.



21 LARRY R. HICKS
22 UNITED STATES DISTRICT JUDGE
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